

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, BANPUR.

Present. : Miss Sarmistha Dash, LL.B.,
Judicial Magistrate First Class,
Banpur

Date of argument. : 15.10.2014

Date of Judgment. : 20.10.2014

G.R. No. 38/1999
T.R. No. 566/1999

State

.....Prosecution.

-Versus-

1. Sudhakar Behera, aged about 35 years, S/o Abhimanyu Behera of Vill: Pathara, P.S: Khalikote, Dist: Ganjam.
2. Sanjaya Behera, aged about 35 years, S/o Ganesh Behera of Vill: Langaleswar, P.S: Khalikote, Dist: Ganjam.
3. Pabitra Sahu, aged about 36 years, S/o Iswar Sahu of Vill: Langaleswar, P.S: Khalikote, Dist: Ganjam.

..... Accused persons.

Offence: Under Sections 457/34 of the I.P.C.

For the Prosecution. :Sri J.Pradhan, APP.

For the Defence. :Sri S.K.Pattnaik & others.

J U D G M E N T.

01. The accused persons stand charged for the offence punishable Under Sections 457/34 of the Indian Penal Code.

02. The case of the prosecution in brief runs thus:

One Simanchala Gajendra appeared before the I.I.C. Balugaon P.S alleging therein that on 6/7.02.2009 at about 2am in the night while they slept in their house the accused persons by breaking the front door entered in to the house for committing theft. Hearing the shout they woke up and the accused persons seeing them fled away from the spot.

Upon such report P.S. Case No.21/1999 was registered and investigation was carried out and after completion of investigation as prima facie evidence is well made out against the accused persons, the I.O. submitted charge sheet against them. Hence this trial.

03. The plea of defence is one of complete denial and false implication.

04. The point for determination in this case emerges as follows:

- (i) Whether on 6/7.02.2009 at about 2am in the night at Betugaon the accused persons in furtherance of their common intention committed lurking house trespass by night to commit an offence which was used for the custody of the property?

5. In order to prove its case, prosecution has examined as many as five P.Ws in its favour where as defence has examined none. Out of which P.W.2 is the informant and rest are independent witnesses to the occurrence.

06. This is a case U/s 457/34 of the I.P.C. In order to substantiate the case against the accused persons it is necessary to scrutinize the case of prosecution. During course of the trial P.W.2 who is the informant of this case deposed that he could not recalled the incident.

Considering the above evidence on record I am of the opinion that prosecution has miserably failed to prove its case beyond all reasonable doubt. In the result, the accused persons are found not guilty for the offence U/s 457/34 of the I.P.C. and acquitted thereof U/s.248 (1) of Cr.P.C. They be set at liberty and discharged from their bail bonds.

Judicial Magistrate First Class,
Banpur.

This judgment is typed to my dictation, corrected by me and pronounced in the open court, given under my hand and seal of this court, this the 20th day of October, 2014.

Judicial Magistrate First Class,
Banpur

List of witnesses examined for Prosecution.

P.W.1 Gopinath Behera
P.W.2 Simanchal Gajendra
P.W.3 Hajari Gajendra
P.W.4 Rahas Dei
P.W.5 Mitu Gajendra

List of witnesses examined for defence.

None.

List of Exhibits marked for Prosecution.

Ext.1 F.I.R.
Ext.1/1 Signature of P.W.2 on Ext.1.

List of Exhibits marked for defence.

Nil.

List of MOs marked for Prosecution.

Nil.

Judicial Magistrate First Class,
Banpur

